

TESTIMONY

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BEFORE

HOUSE GOVERNMENT REFORM

**SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY & HUMAN
RESOURCES**

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“LAW ENFORCEMENT AND THE FIGHT AGAINST METHAMPHETAMINE”

INTRODUCTION

Good morning Mr. Chairman and Members of the Subcommittee on Criminal Justice, Drug Policy and Human Resources. My name is Joseph R. Heerens and I am Senior Vice President of Government Affairs for Marsh Supermarkets, Inc., headquartered in Indianapolis, Indiana. My statement today is on behalf of Marsh Supermarkets and the Food Marketing Institute ("FMI"). FMI is our national trade association representing food retailers and wholesalers.

First of all, I wish to commend Chairman Souder for your leadership on the methamphetamine problem and for your efforts to establish an improved federal policy that will help combat the diversion of pseudoephedrine products. This leadership is reflected in legislation (H. R. 5347) that Chairman Souder recently introduced which would eliminate the so-called safe-harbor exemption for cough and cold products that contain pseudoephedrine and would establish a national threshold limitation of 6 grams for single transactions at the retail level. Marsh Supermarkets and FMI strongly support your proposal.

SCHEDULE V – THE OKLAHOMA MODEL

Our industry fully understands the magnitude of the methamphetamine problem in the United States, and we also recognize the fact that legitimate cough and cold products are used to manufacture methamphetamine. To effectively combat the illegal diversion of chemical precursors, we need a comprehensive strategy and partnership between law enforcement, our regulatory agencies, manufacturers and the retail community.

But, we have serious concerns and misgivings about recent initiatives at the state level that impose stringent controls on precursor chemicals. I am referring specifically to the Oklahoma law that relegates cough and cold products to Schedule V status. Under the Oklahoma model, only retail stores that have a pharmacy department are allowed to sell these medications, and these items must be kept behind the pharmacy counter.

SUPERMARKET CONCERNS

For our industry, a Schedule V approach is very troublesome. That's because an overwhelming majority of grocery stores in the United States do not have a pharmacy department. For example, my company currently operates approximately 120 supermarkets in Indiana and Ohio, but only 46 of them have a pharmacy department. Therefore, under the Oklahoma model, more than 60 percent of our stores could not sell the pseudoephedrine products that our customers expect us to carry to meet their shopping needs. In terms of Indiana, there are approximately 851 supermarkets throughout the state, but only 182 of these stores - 21.4 percent – have a pharmacy

department. In the Third Congressional District, there are 105 supermarkets doing business, but only 23 – 22.1 percent – have an in-store pharmacy.

Of our 46 Marsh Supermarkets that do have a pharmacy department, store hours are quite different from hours of operation in the pharmacy department. Most of our supermarkets are open 24-hours to serve our customers, who shop at all hours of the day and night. In comparison, our pharmacy departments are typically open less than 12 hours per day; those hours being from 9:00 am to 9:00 pm on weekdays, 9:00 am to 7:00 pm on Saturdays, and 11:00 am to 5:00 pm on Sundays. Therefore, even if the store is open for business, if the pharmacy department is not open or if the pharmacist is not on duty, sales of cough and cold products would not be permitted and our customers would have to shop elsewhere to meet their needs in this respect. That causes us great concern.

OPERATIONAL ISSUES

A Schedule V approach would also present a series of operational challenges for pharmacy departments in grocery stores. For example, the average Marsh Supermarket typically carries, on its retail shelves, more than 150 types of cough and cold products that contain pseudoephedrine. In contrast, under a Schedule V approach requiring cough and cold medications to be kept behind the pharmacy counter, my company would likely have to reduce the number of these products to no more than a few dozen. This is due to space limitations in the existing pharmacy departments. As such, a Schedule V classification would mean less choice for our customers as well as dramatically reduced customer access to these over-the-counter medications. Moreover, consumers would no longer have the opportunity to physically examine and read the labels of the different brands and types of cough and cold products prior to making a purchasing decision.

It is also likely that Schedule V would force my company to spend a lot of money on construction to reconfigure our store lay-outs to make the pharmacy departments larger in order to facilitate new work flow and to accommodate the relocation and placement of all these products behind the pharmacy counter.

Additionally, Schedule V restrictions raise significant quality-of-care questions for our pharmacy operations. Under Schedule V, only the pharmacist or the pharmacy technician would be permitted to complete a sales transaction with a customer, which means less time for them to carry out their primary professional responsibilities of preparing and dispensing prescription drugs and consulting with customers about the safe and effective use of their prescription medications.

IMPACT ON CONSUMERS

For all of the reasons I have mentioned, the supermarket industry cannot support a Schedule V classification for cough and cold products containing pseudoephedrine. Schedule V poses problems for supermarket companies and their customers who have a

legitimate need for these products in order to treat their coughs and colds. There would be reduced customer access and customer inconvenience because their local grocery store, which they visit more than two (2) times each week, would not be allowed to sell these products or, if it contained a pharmacy department, would be allowed to sell these products but only behind the pharmacy counter.

We further suspect that Schedule V may mean higher prices, as these over-the-counter products move from self-service to behind the pharmacy counter where the pharmacist will be required to ask for photo identification and have the customer sign a written log. And finally, Schedule V could not come at a more inopportune time with the current flu vaccine shortages here in the United States.

Our industry applauds the hard work of the law enforcement community in its efforts against methamphetamine, but we do not believe Schedule V is the right solution. Instead, we advocate for a more comprehensive approach to the meth problem in terms of reducing methamphetamine production, trafficking and abuse.

ALTERNATIVE INITIATIVES

In this regard, the supermarket industry strongly supports the following initiatives:

- Elimination of the blister pack exemption
- A national uniformity threshold sales limit of 6 grams
- Greater regulatory authority, controls, tracking and quota limits over imports and the sale of bulk chemicals of ephedrine and pseudoephedrine
- A ban on Internet sales of precursor chemicals
- Promotion and funding of educational training programs for store employees concerning suspicious pseudoephedrine purchases (Meth Watch Program).
- Stiffer penalties for the manufacturing, distribution and possession of methamphetamine
- Greater federal regulatory authority, including licensing and inspection at the distributor level, especially secondary wholesalers

Mr. Chairman, this concludes my statement, and thank you for allowing me to participate in this important hearing.